

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

MAILED

MAY 19 2004

PAT. & T.M. OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DOUGLAS R. DOMEL and WINSTON G. WALKER

Application No. 10/062,655

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on April 8, 2004. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

On September 23, 2003, appellants filed an appeal brief (Paper No. 11). A review of the file reveals that the fee was not charged for the appeal brief. Before further review of this file, the appeal brief fee must be applied to the appellants' account.

Also, appellants filed an Information Disclosure Statement (IDS) (Paper No. 12) on November 28, 2003. It is not clear from the record whether the examiner considered the IDS submitted or whether the examiner notified appellants of why their submission did not meet the criteria set forth in 37 CFR §§ 1.97 and 1.98.

In addition, on December 29, 2003, the examiner filed an examiner's answer (Paper No. 13). There is no indication that an appeal conference was held because the examiner's answer contains only the typed names of the conferees. No signature or initialing by the conferees is present. The Manual of Patent Examining Procedures (MPEP) § 1208 states:

The participants of the appeal conference should include (1) the examiner charged with preparation of the examiner's answer, (2) a supervisory patent examiner (SPE), and (3) another examiner, known as a conferee, having sufficient experience to be of assistance in the consideration of the merits of the issues on appeal.

Upon receipt of the appeal case by the Board of Patent Appeals and Interferences (Board), the Board should review the application prior to assigning an appeal number to determine whether an appeal conference has been held.

Accordingly, it is

ORDERED that this application be returned to the examiner for: 1) entry of the appeal brief fee; 2) consideration of the Information Disclosure Statement (Paper No. 12);

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3) appropriate notification by the examiner to appellants of such consideration; 4) proper indication that an appeal conference was held; 5) notifying the appellants, in writing, that the appeal conference was held; and 6) for such further action as may be appropriate.

It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the status of this appeal (i.e., abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS
AND INTERFERENCES

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